

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Victor M. Kern Construction Co.,

Plaintiff,

v.

ORDER

Civil No. 11-124 (MJD/LIB)

H. Michael Carr, Stephen Young,
Michael D. Carr, Lane D. Waldahl,
County Commissioner, William Stearns,
County Commissioner, Ralph Miller,
County Commissioner, Bruce Uselman,
William Cross, Jeffrey D. Pederson,
Orville Meyer, County Commissioner,
Rodney Bounds, County Commissioner,
Jeffrey Jares, Cory Carr, Bryan Savoloja,
and Thomas Speed,

Defendants.

Plaintiff is *pro se*.

This matter is before the Court on Plaintiff's motion for a New Trial pursuant to Fed. R. Civ. P. 59. For the reasons discussed below, the motion is denied.

Background

This matter was filed on January 18, 2011. In the Complaint, Plaintiff

asserted a number of constitutional violations. Defendants moved to dismiss this action as it was improperly served pursuant to Rule 4 of the Federal Rules of Civil Procedure. Defendants further moved to dismiss pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure, arguing Plaintiff failed to state a claim for relief.

The motion to dismiss was granted, and this action was dismissed with prejudice by Order dated July 1, 2011.

Standard

As it is clear no trial occurred in this matter, the Court will construe Plaintiff's motion as one to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e). Such a motion, however, must be filed no later than 28 days after entry of judgment. Judgment was entered on July 1, 2011. This motion was not filed until August 3, 2011. The motion is therefore untimely.

Even if the motion were timely filed, Plaintiff has not put forth any argument upon which the Court could grant relief under Rule 59(e). Motions to amend or alter judgment serve a limited function, "to correct manifest errors of law or fact or to present newly discovered evidence." Hagerman v. Yukon Energy Corp., 839 F.2d 407, 414 (8th Cir. 1988). Plaintiff has not come forward

with newly discovered evidence, nor has he identified a manifest error of law or fact in the Court's previous dismissal order. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for a New Trial [Doc. No. 39] is DENIED.

Date: December 13, 2011

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court